

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

SHAWN ALLEN COTTRELL,

Plaintiff,

vs.

SPOKANE COUNTY, MRS.
JOHNSON and GRADY JACKSON,

Defendants.

NO: CV-12-395-JPH

ORDER ADOPTING REPORT AND
RECOMMENDATION AND
DISMISSING FIRST AMENDED
COMPLAINT

1915(g)

After construing Plaintiff's document titled, "First Amended Motion," as his First Amended Complaint, Magistrate Judge Hutton recommended dismissing the First Amended Complaint with prejudice for failing to state a claim upon which relief may be granted on December 5, 2012. Plaintiff had failed to present a causal connection between named Defendants and the conduct of which he complained. *Hamilton v. Endell*, 981 F.2d 1062, 1067 (9th Cir. 1992). He alleged no facts showing Defendant Johnson or Shanks were involved in any constitutional deprivation. *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989).

ORDER ADOPTING REPORT AND RECOMMENDATION AND DISMISSING
FIRST AMENDED COMPLAINT--1

1 Plaintiff presented no facts from which the Court could infer the following
2 Defendants were acting under color of state law: Grady Jackson, an inmate, *see*
3 *Price v. State of Hawaii*, 939 F.2d 702, 707-08 (9th Cir. 1991); and John Whaley, a
4 Public Defender, *see Polk County v. Dodson*, 454 U.S. 312, 317–18 (1981),
5 *Miranda v. Clark County Nevada*, 319 F.3d 465,468 (9th Cir. 2003)(*en banc*).
6 Plaintiff alleged no facts to lower the shield of absolute judicial or prosecutorial
7 immunity against the following Defendants: Superior Court Judges Annette Plese
8 and Leveque, *see Stump v. Sparkman*, 435 U.S. 349, 356 (1978), *Ashelman v.*
9 *Pope*, 793 F.2d 1072, 1075 (9th Cir. 1986); Prosecutor Patrick A. Johnson, *see*
10 *Milstein v. Cooley*, 257 F.3d 1004, 1008 (9th Cir. 2001). In addition, Plaintiff
11 failed to adequately allege that Spokane County (or its subsidiary Spokane County
12 Jail Classification Unit) engaged in a pattern or practice that resulted in the
13 deprivation of his constitutional rights. *See Monell v. New York City Dep't of*
14 *Social Services*, 436 U.S. 658, 690-94 (1978).

15 Although granted a generous extension of time in which to do so, Plaintiff
16 has filed no objections to the Report and Recommendation. For the reasons set
17 forth above and by the Magistrate Judge, **IT IS ORDERED** the Report and
18 Recommendation, **ECF No. 26**, is **ADOPTED in its entirety** and the First
19 Amended Complaint is **DISMISSED with prejudice** for failure to state a claim
20 upon which relief may be granted. 28 U.S.C. §§ 1915(e)(2) and 1915A(b)(1).

1 Pursuant to 28 U.S.C. § 1915(g), enacted April 26, 1996, a prisoner who
2 brings three or more civil actions or appeals which are dismissed as frivolous or for
3 failure to state a claim will be precluded from bringing any other civil action or
4 appeal *in forma pauperis* “unless the prisoner is under imminent danger of serious
5 physical injury.” 28 U.S.C. § 1915(g). **Plaintiff is advised to read the new**
6 **statutory provisions under 28 U.S.C. § 1915. This dismissal of Plaintiff’s**
7 **complaint may count as one of the three dismissals allowed by 28 U.S.C. §**
8 **1915(g) and may adversely affect his ability to file future claims.**

9 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
10 Order, enter judgment, forward copies to Plaintiff at his last known address, and
11 close the file. The District Court Executive is further directed to forward a copy of
12 this Order to the Office of the Attorney General of Washington, Criminal Justice
13 Division. The court certifies any appeal of this dismissal would not be taken in
14 good faith.

15 **DATED** this 24th day of May 2013.

16
17 s/ Rosanna Malouf Peterson
18 ROSANNA MALOUF PETERSON
19 Chief United States District Court Judge
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